

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DERRICK CARROLL,

Defendant Below-  
Appellant,

v.

STATE OF DELAWARE,

Plaintiff Below-  
Appellee.

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No. 198, 2016

Court Below: Superior Court  
of the State of Delaware

ID No. 1502008739

Submitted: February 8, 2017

Decided: March 27, 2017

Before **STRINE**, Chief Justice; **HOLLAND** and **VAUGHN**, Justices.

**ORDER**

On this 27<sup>th</sup> day of March 2017, upon consideration of the parties' briefs and the record of the case, it appears that:

(1) Appellant, Derrick Carroll, appeals from a Superior Court jury verdict finding him guilty of Possession of a Firearm by A Person Prohibited ("PFBPP") and Possession of Ammunition by A Person Prohibited ("PABPP"). He makes one claim on appeal. He contends that the evidence presented at trial was insufficient to prove beyond a reasonable doubt that he intentionally had dominion and control of a firearm and ammunition at the time of the alleged offenses.

(2) On February 12, 2015, police officers from the Newark Police Department went to the Roadway Inn on South College Avenue. As part of an

investigation, the officers knocked on the door to Room #142, which was occupied at that time by Carroll and his girlfriend, Kayla Nunley. Carroll granted the officers entry and consented to a search of the room. During this search, the officers discovered several glassine baggies, which are commonly used to store heroin, and a black bag that contained syringes. In response to questioning, Carroll informed the officers that he was a drug user. The officers did not find drugs in the room and did not arrest Carroll at the time.

(3) The following evening, officers searched Carroll's room for a second time. The only persons present during this second search were the police officers who were conducting the search. During the second search, the police found a Smith & Wesson .38 caliber revolver in a suitcase that contained men's clothing. Officers also found a black bag that contained several loose rounds of ammunition and a magazine for a handgun. The bag with the ammunition was found on the back bed, which was confirmed by Carroll to be the bed he used when speaking with the officers the day before. In addition, the officers found documents belonging to Carroll and some of his personal effects.

(4) Carroll was interviewed by a detective on March 10, 2015. He denied that the gun or ammunition belonged to him. He acknowledged that he had "touched the gun," but later added that he had not touched it that day. In response to

questioning about how the gun got into his room, Carroll stated that the gun was not in the room on the night of the first search. He stated that the police had “spooked somebody,” and that person believed Carroll’s room would not be searched again. He further stated that the individual brought the gun to the room after the conclusion of the first search. When asked who placed in the gun in his room, Carroll would not answer. Carroll was asked whether he could state where in the room the gun had been located, and said he believed it was “underneath the bed” and did not know that it was in a suitcase. In addition, although he said he did not see the ammunition that day, he was aware that it was in the black bag. He estimated he was in the room with the gun for about “three minutes” and then Carroll and his girlfriend left the motel. He acknowledged that he left personal belongings including two blue suitcases when he left the motel following the first search. He also stated that he slept in the bed furthest from the door.

(5) Carroll was later arrested and indicted on charges of PFBPP, PABPP, Possession of Drug Paraphernalia, Receiving Stolen Property, and Theft of a Motor Vehicle. The case proceeded to trial on the charges of PFBPP, PABPP, Possession of Drug Paraphernalia, and Receiving Stolen Property. At trial, Carroll stipulated to the fact that he was a person prohibited.

(6) During the trial, Rahesh Naik, the manager of the Roadway Inn Motel, testified that Carroll rented the room from February 9 to February 14, 2015. He stated that Carroll paid for the room in cash. Naik also testified that Carroll called the motel and asked whether he could send somebody to pick up his belongings, and that he informed Carroll that he would have to come to retrieve his things in person. In his interview with the police, Carroll stated that he sent his brother and father to retrieve his remaining belongings after the second search. At the close of the State's case, Carroll moved for judgment of acquittal. The Superior Court denied the motion.

(7) This Court reviews an appeal from the denial of a motion for judgment of acquittal *de novo*.<sup>1</sup> Specifically, this court examines “whether any rational trier of fact, viewing the evidence in the light most favorable to the State, could find a defendant guilty beyond a reasonable doubt of all the elements of the crime.”<sup>2</sup> “For the purposes of this inquiry, this Court does not distinguish between direct and circumstantial evidence.”<sup>3</sup>

(8) The statute governing PFBPP and PABPP states that “[e]xcept as otherwise provided therein, the following persons are prohibited from purchasing,

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<sup>1</sup> *Cline v. State*, 720 A.2d 891, 892 (Del. 1998).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

owning, possessing or controlling a deadly weapon or ammunition for a firearm within the state.”<sup>4</sup>

(9) On appeal, Carroll argues that the State did not prove that he possessed the firearm or the ammunition beyond a reasonable doubt. In addition, he argues that even if he did possess the firearm and ammunition, the State failed to establish that the possession occurred within the state of Delaware. However, we are satisfied viewing the evidence in the light most favorable to the State, a rational trier of fact could have determined that Carroll actually or constructively possessed the firearm and ammunition in Delaware.<sup>5</sup> Therefore, his claim is without merit.

(10) To prove actual possession, the State must establish that the defendant “knowingly ha[d] direct physical control over [the item] . . . that amounts to a conscious dominion, control and authority.”<sup>6</sup> The State must establish “more than proximity to, or awareness of [the item]”.<sup>7</sup>

(11) A rational trier of fact presented with the State’s evidence could make a determination that Carroll actually possessed both the firearm and the ammunition

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<sup>4</sup> 11 *Del. C.* § 1448.

<sup>5</sup> Officer Taras Gerasimov testified that on February 12, 2015, he searched Carroll’s room at the Roadway Inn, and confirmed its location at 1120 South College Avenue in Newark, Delaware. Detective James Skinner testified that he searched Carroll’s room on February 13, 2015, and also confirmed that the Roadway Inn is located in Newark. *Id.* at 15.

<sup>6</sup> *Thomas v. State*, 2005 WL 3031636, at \*2 (Del. Nov. 10, 2005).

<sup>7</sup> *Id.*

when viewing the evidence in the light most favorable to the State. The State showed through testimonial evidence as well the footage from Carroll's interview that Carroll "possess[ed] a weapon or ammunition at any time."<sup>8</sup> The trier of fact could find that Carroll had direct physical control of the firearm and the ammunition when the items were allegedly left in his motel room by another individual. During the second search, police found documents belonging to Carroll and some of his personal effects, in addition to finding the firearm and the ammunition. The bag containing the ammunition was found on his bed, the one furthest from the door. Moreover, Carroll admitted to remaining in the room with both the firearm and ammunition before leaving the motel.

(12) Items within the defendant's "reasonable control" are said to be in his or her constructive possession.<sup>9</sup> "Constructive possession requires the State to show that the defendant 'knew the location' of the objects, 'had the ability to exercise dominion and control,' and 'intended to exercise dominion and control' over them."<sup>10</sup> "[I]t is well established that circumstantial evidence may prove constructive

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Lum v. State*, 101 A.3d 970, 971 (2014) (quoting *State v. Layton*, 988 A.2d 935, 936 (Del. 2010)).

possession.”<sup>11</sup> The intention to exercise dominion and control can be exercised “either directly or through another person.”<sup>12</sup>

(13) In order to establish constructive possession, the State must satisfy each prong of the established test.<sup>13</sup> First, the State must demonstrate that Carroll knew the location of the firearm and ammunition. During his interview with Detective Watson, Carroll indicated that he knew the firearm was in the motel room. When confronted with information that the firearm was found in his suitcase, Carroll posited that he believed the firearm was “underneath the bed.” In addition, although he did not see the ammunition that day, he was aware that the ammunition was inside of the black bag, which was found on the bed used during his stay in the motel room. Thus, a rational trier of fact could have found the first element beyond a reasonable doubt.

(14) Second, the State was required to show that Carroll had the ability to exercise dominion and control over the firearm. Because the firearm was amongst his belongings in a room that he had rented under his own name, Carroll certainly had the ability to exercise dominion and control over the gun and the ammunition. Thus, the trier of fact could find this element beyond a reasonable doubt.

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<sup>11</sup> *Lecates*, 987 A.2d at 426 (citing *White v. State*, 906 A.2d 82, 86 (Del. 2006)).

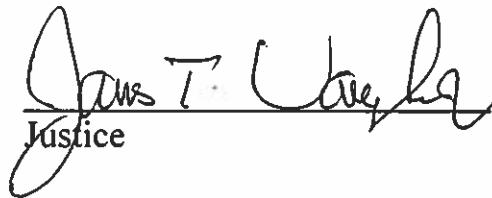
<sup>12</sup> *Gallman v. State*, 14 A.3d 502, 506 (Del. 2011) (citing *Eley v. State*, 2010 WL 5395787, at \*1 (Del. 2010)).

<sup>13</sup> *Lum*, 101 A.3d at 971 (quoting *Layton*, 988 A.2d at 936).

(15) Finally, the State had to prove that Carroll “intended to exercise dominion and control” over the firearm and ammunition.<sup>14</sup> When Carroll left the motel room, he left items behind including the suitcases, the gun, the ammunition and other personal effects. After the second search, Carroll called the motel to see if another individual could pick up his belongings. At that time, he was unaware of what had been taken as a result of the second search. This call constitutes evidence of Carroll’s intent to guide the firearm, ammunition, and other belongings to another location. Thus, viewing the evidence in the light most favorable to the State, a rational trier of fact could have found that Carroll intended to exercise dominion and control over the firearm and ammunition.

NOW, THEREFORE, IT IS THE ORDER of the Court that the judgement of the Superior Court is AFFIRMED. The time for filing a motion for reargument is shortened to three days.<sup>15</sup>

BY THE COURT:

  
Justice

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<sup>14</sup> *Id.*

<sup>15</sup> Supr. Ct. R. 4 and 18.